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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,696	12/07/2001	Joseph J. Solon	103	7649

7590 07/30/2003

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EXAMINER

HAMILTON, ISAAC N

ART UNIT	PAPER NUMBER
	3724

DATE MAILED: 07/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant No.	Applicant(s)
	10/005,696	SOLON, JOSEPH J.
	Examiner Isaac N Hamilton	Art Unit 3724
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b>		
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>		
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>13 May 2003</u> .		
2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b> .      2b) <input type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>10-12,14,15,17 and 18</u> is/are pending in the application.		
4a) Of the above claim(s) <u>11,14,15 and 18</u> is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>10,12 and 17</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
<b>Attachment(s)</b>		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____.		

**DETAILED ACTION**

1. Cancellation of claims 1-9, 13 and 16 is acknowledged.

***Election/Restrictions***

2. Applicant's election of Species B, figure 2 and claims 10, 12 and 17, in Paper No. 08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Drawings***

3. Objections to the drawings are hereby withdrawn.

***Specification***

4. The objection to the abstract is hereby withdrawn in lieu of the amendment in Paper No. 08.

***Claim Rejections - 35 USC § 112***

5. Rejections made under 35 USC 112 are rendered moot in lieu of the amendment in Paper No. 08.

***Claim Rejections - 35 USC § 102***

Art Unit: 3724

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 10-13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoendelen (1,578,854).

Regarding claim 10, note power actuated strip feeder means 29; tread strip 26 in figure 3; shorter end is vertical edge in figure 3; linear transit path in figure 1, which starts at 23 and goes to 31, 29, 45 and 65; strip shaping means 49, 51, 22 and 18; tread strip portions 63 and 64; narrower rectangular shaped strip juxtaposed between tread strip portion 63 and 64 and aligned with scrap portions 61. It is noted that linear is interpreted to mean “of the first degree with respect to one or more variables” as defined in Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition. Since all of the components 23, 31, 29, 45 and 65 are straight edges, they can all be represented with a linear equation of the first degree. It is also noted that the conveyor belt grasps the shorter end of the tread strip through frictional forces.

Regarding claim 12, note punching means 18 and 22; slicing means 51 and 49.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schoendelen in view of Burmeister et al (4,570,518), hereafter Burmeister. Schoendelen discloses everything as noted above and discloses cutting means 49 and 51; cutting laterally is interpreted to be along the horizontal edge direction in figure 3; one end of the tread strip is closest to the cutting means 49 and 51 in figure 2; the other end of the tread strip is part of the punched circle 62 in figure 2. Schoendelen does not disclose precision length. Burmeister discloses precision length in column 2, lines 20-27. It would have been obvious to provide precision length in Schoendelen as taught by Burmeister in order to accurately dimension traveling webs. It is noted that by adjusting the distance between the slitting cutters 49 and 51 in Schoendelen, the length of the tread strip is increased and decreased because one end of the tread strip is part of circle 62. Therefore, if the width between the cutters 49 and 51 is increased as taught by Burmeister the length of the tread strip is increased.

#### *Response to Arguments*

Applicant's arguments with respect to claims 11, 14, 15 and 18 have been considered but are moot in view of election of species.

Applicant's arguments filed 5-13-2003 have been fully considered but they are not persuasive. In response to applicant's argument that a machine for cutting thin strips of metal is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case,

both thin metal sheets and steel belted tire carcasses are considered to be sheet material, and Schoendelen is capable of cutting any sheet material. Applicant asserts that scrap portions are cut out of the sheets rather than the outer edges and thus does not anticipate the claimed apparatus. However, it is believed that the scrap portions 62 are the “patterned strips of precise dimension” and the outer edges 63 and 64 are the “tread strip portions that are removed” as stated in the preamble of claim 10. Applicant asserts that the tread strips are not grasped at the shorter end and passed through the linear transit path. However, it is believed that the tread strips are grasped at the shorter end and that the tread strips are passed through the linear transit path. The tread strips are placed on conveyor 29 and conveyed upwards towards the cutters 49 and 51. If friction from the conveyor material were not “grasping” the tread strip, then it would slide to the floor. Moreover, the “grasping” of friction occurs over the entire surface area of the tread strip that is in contact with the conveyor, including the shorter end. Pertaining to the tread strip being passed through the linear transit path, it is true that the tread strip is “grasped” only while it is on the conveyor 29, and it is also true that the linear transit path comprises elements 23, 31, 29, 45 and 65; however, “passing them through” only requires that the tread strip is “grasped” and “passed” through a portion of the linear transit path and a portion of the shaping means. Merriam-Webster’s Tenth Edition Collegiate Dictionary defines “passing” as “going by or past”, and also “having a brief duration”. This limitation does not require “passing” to occur from the beginning of the linear transit path to the end of the linear transit path, and only requires that the tread portion is “passed” and “grasped” through just a portion of the linear transit path.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

IH  
July 24, 2003

  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700